

FREEDOM COURT REPORTING

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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ALABAMA
3 MIDDLE DIVISION
4

5 CASE NUMBER: CV 2:06-CV-496-MEF

6 U.S. BEVERAGE, INC.,

7 Plaintiff(s),

COPY

8 vs.

9 JOHN BUSTER WALKER, II; TRIDENT
10 MARKETING, INC; and A, B, C, and D,
11 fictitious defendants whose names are
12 otherwise unknown but which will be
13 supplemented by amendment,
14 Defendant(s).
15

16 S T I P U L A T I O N

17 IT IS STIPULATED AND AGREED
18 by and between the parties through
19 their respective counsel, that the
20 deposition of JOHN B. WALKER, II may
21 be taken before TAMIE J. STORY,
22 Commissioner, at the offices of Raymond
23 L. Jackson, Jr., 660 North College

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1 Q. A one-third shareholder in
2 the company?

3 A. Correct.

4 Q. And you agree you became an
5 officer of the corporation?

6 A. Correct.

7 Q. Would you agree with me
8 that -- Well, let me strike that.

9 Let's go through these real
10 quick.

11
12 (Whereupon, Plaintiff's Exhibit 1
13 was marked for identification and
14 same is attached hereto.)

15
16 Q. Would you look at that
17 document for me and tell me what it is?

18 A. (Witness complies). It was
19 a meeting of the special minutes (sic)
20 of the shareholders of Tropical
21 Perfections.

22 Q. Is that your company,
23 Tropical Perfections?

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1 Q. I'm just going to go
2 through a couple of these real quickly.

3 This is an agreement to
4 purchase corporate stock of Tropical
5 Perfections, Incorporated; right?

6 A. Correct.

7 Q. And you signed this
8 individually and as a shareholder of
9 Tropical Perfections; is that correct?

10 A. That's correct.

11 Q. When this purchase took
12 place on April 24, 2002, you told me
13 that you agreed that you became a
14 shareholder and an officer?

15 A. (Witness nodding head).

16 Q. Did you take a title at
17 that point?

18 A. I did.

19 Q. What was that title?

20 A. Vice president.

21 Q. What was your primary area
22 that you were a vice president in?

23 A. Sales.

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1 through briefcase).

2 MR. JACKSON: Now, what are
3 you getting out, John?

4 THE WITNESS: This
5 (indicating).

6 MR. JACKSON: Is that the
7 thing you wrote to me? If he starts
8 referring to that, it becomes part --
9 You sent that to me when you retained
10 me, and I consider that to be attorney/
11 client privilege. I don't want you to
12 -- don't refer to it, don't -- just put
13 it back up. Just answer the question
14 the best way you can without referring
15 to any correspondence.

16 THE WITNESS: Okay.

17 A. I'm sorry. What was the
18 question again?

19 Q. When is the first time that
20 you remember discussing starting a
21 business with Ryan Hamner?

22 A. I would say it was sometime
23 in early 2004.

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1 Q. That's not the question. I
2 made a statement. You told me -- It's
3 based on what you told me. In early
4 2004, you were discussing with Ryan
5 Hamner starting a new company?

6 A. Correct.

7 Q. And you just told me that
8 the purpose of that company would be to
9 market a juice product?

10 A. Correct.

11 Q. Now, in early 2004, that
12 would have been the primary business
13 that U.S. Beverage was in at that
14 point; correct?

15 MR. JACKSON: Object to the
16 form.

17 A. No. I wouldn't say it was
18 the primary business.

19 Q. Well, it was certainly a
20 business that they were in, was it not?

21 A. It was a part of the
22 business they were in, yes; they did
23 sell that brand or that product.

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1 Q. When did Trident Marketing
2 come into existence?

3 A. The day it was incor-
4 porated?

5 Q. No. When did it come into
6 existence?

7 A. I would say sometime in mid
8 to early 2004.

9 Q. Was it incorporated at a
10 later time than that?

11 A. I think -- Yeah, I think it
12 was actually incorporated toward the
13 middle or the latter part of that
14 year. I don't know the exact date.

15
16 (Whereupon, Plaintiff's Exhibit 7
17 was marked for identification and
18 same is attached hereto.)

19
20 Q. I'm going to mark this as
21 Plaintiff's Exhibit 7. Would you take
22 a look at that document and tell me
23 what it is. This is a document you

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1 A. No, I don't believe we did.

2 Q. By the offer, I'm
3 referencing Plaintiff's 7.

4 A. No, I don't believe we made
5 this offer to any other company.

6 Q. All right. Is it not true
7 that you were upset about what you
8 believed was a salary cut in October of
9 2003 and you were upset about Ryan
10 Hamner not being asked to work for U.S.
11 Beverage, so you decided to go start
12 Trident Marketing?

13 A. No, that's not true.

14 Q. Well, why did you start
15 Trident Marketing?

16 A. To offer services that U.S.
17 Beverage needed.

18 Q. Again, we'll go back to the
19 same question: Was Trident Marketing's
20 sole purpose to benefit U.S. Beverage?

21 A. It wasn't its sole purpose.
22 It was -- again, we were offering
23 something -- We had an opportunity to

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1 Q. You offered it to them at a
2 price; right?

3 A. Certainly.

4 Q. Now, at the same time in
5 early 2004, did you not -- let me show
6 you some documents.

7
8 (Whereupon, Plaintiff's Exhibit 8
9 was marked for identification and
10 same is attached hereto.)

11
12 Q. I'll mark this as
13 Plaintiff's Exhibit 8. I'm sorry, can
14 I see that a minute?

15 A. (Witness complies).

16 Q. Can you tell me what this
17 document is?

18 A. It looks like the bylaws of
19 U.S. Beverage.

20 Q. Would you look at the last
21 page of it.

22 A. (Witness complies).

23 Q. Can you tell me what date

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1 that is?

2 A. March 24th of 2004.

3 Q. Would you agree with me you
4 signed this --

5 A. Yes.

6 Q. -- as a shareholder and
7 officer of the corporation?

8 A. Yes.

9 Q. Tell me what GBD Holding,
10 LLC is.

11 A. It's a company that owns
12 the building that U.S. Beverage is
13 housed in, that it operates out of.

14 Q. Are you a member of that
15 LLC?

16 A. I am.

17 Q. So you're an owner of the
18 building?

19 A. I'm a shareholder in the
20 corporation.

21 Q. So you're still an owner of
22 U.S. Beverage's building?

23 A. Apparently so (nodding

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1 head).

2 Q. Now, at this same time
3 frame, March, 2004, did you also sign
4 in regard to several -- at least one
5 loan that the company took out?

6 A. I'm sure I did. I signed
7 on a lot of different loans and leases
8 for U.S. Beverage. I don't recall one
9 specifically on that date or that
10 month.

11 Q. Why would you have to do
12 that?

13 A. Because we needed money or
14 we needed financing for something.

15 Q. Right. And you were a
16 shareholder; correct --

17 A. That's correct.

18 Q. -- so they needed you to
19 sign to get those loans; correct?

20 A. In some situations, they
21 did (nodding head).

22 Q. Well, you understand that
23 -- well, strike that.

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1 document here with me.

2 MR. GILL: That's fine. I
3 mean, I would like -- it's not going to
4 be a disputed fact.

5 MR. JACKSON: Yeah.

6 MR. GILL: I mean, it's
7 going to be incorporated --

8 MR. JACKSON: If you'll
9 remind me on a break, I'll pull up the
10 web site and we'll pull up the record.

11 MR. GILL: Okay.

12 Q. When it was incorporated,
13 how many shareholders were there?

14 A. Two.

15 Q. That would be you and Ryan
16 Hamner?

17 A. That's correct.

18 Q. Now, when you incorporated
19 it, what was the general purpose of the
20 corporation? Did you have any?

21 A. It was to market a line of
22 -- it was to create, brand, and market
23 a line of juice products for sale via

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1 the Internet.

2 Q. Okay. Which would be the
3 business that U.S. Beverage was in;
4 right?

5 MR. JACKSON: Object to the
6 form.

7 A. No, I don't think U.S.
8 Beverage was in that business.

9 Q. Well, we know U.S. Beverage
10 is marketing juice products; I mean,
11 it's selling juice products?

12 A. It's selling juice
13 products, they're not branding and
14 marketing and selling them via the
15 Internet.

16 Q. So you're saying your
17 difference is that you can do it
18 through the Internet?

19 MR. JACKSON: Object to the
20 form.

21 A. That's not what I'm saying.

22 Q. Well, did you not state
23 that that's -- I mean, is that not a

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1 that, no.

2 Q. What else would it have
3 been for?

4 A. It wasn't intended to be
5 used as a slush product.

6 Q. What was it intended to be
7 used for?

8 A. It was intended to be
9 marketed via the Internet.

10 Q. What is "it"?

11 A. The juice to daycare
12 centers.

13 Q. So it's juice?

14 A. But you said slush a second
15 ago.

16 Q. Fine. I apologize. Juice.
17 Would you not agree that that's what
18 U.S. Beverage is doing?

19 A. U.S. Beverage sells juice.
20 They don't sell it in the same manner
21 and they don't create and brand and
22 market products.

23 Q. Well, do you not think that

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1 couple of hours, but, I mean, you know
2 it's in their business. I understand
3 what you're trying to say in that you
4 say you're marketing it and selling it
5 on the computer, or the Internet, I
6 apologize, but this is specifically for
7 the product that U.S. Beverage is
8 selling, distributing, anything you
9 want to call it?

10 A. Specifically for? I mean,
11 you will have to -- I'm not quite sure
12 what you're saying there. I mean,
13 we're not coming after U.S. Beverage's
14 accounts with this product.

15 Q. It's your testimony that
16 you're not coming after U.S. Beverage's
17 accounts?

18 A. When this product was
19 created, it was not to sell to accounts
20 that U.S. Beverage was currently
21 selling to, it was to help them.

22 Q. It was designed to sell to
23 different accounts?

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1 A. It was created -- we were
2 marketing a product via the Internet to
3 daycare centers, something that U.S.
4 Beverage could not or did not do at
5 that point in time.

6 Q. In the same location as
7 U.S. Beverage?

8 A. In the same location?

9 Q. In the same geographical
10 region as U.S. Beverage.

11 A. We were going to provide
12 services to U.S. Beverage in -- If
13 you'll look at Plaintiff's Exhibit 7,
14 it outlines a specific area where we
15 were going to provide those services to
16 U.S. Beverage.

17 Q. Right. So you would do it
18 for U.S. Beverage in their region for a
19 commission?

20 A. (Witness nodding head).

21 Q. And you were going to do it
22 elsewhere on your own; is that fair?

23 A. Correct, yes.

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1 Q. And all the while, you're
2 still an officer and a shareholder of
3 U.S. Beverage?

4 A. That's correct.

5
6 (Whereupon, Plaintiff's Exhibit 10
7 was marked for identification and
8 same is attached hereto.)
9

10 Q. I'm going to mark this as
11 Plaintiff's Exhibit 10. Now, this is
12 actually a copy of a card?

13 A. Uh-huh (nodding head).

14 Q. I can show you the actual
15 card if you're not familiar with it.

16 A. I'm familiar with it.

17 Q. When did this come out? Do
18 you have any memory or recollection of
19 when this came out?

20 A. It was produced sometime in
21 2004.

22 Q. Would this have been the
23 first --

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1 A. The first?

2 Q. -- Juice Alive thing that
3 came out or advertisement?

4 A. I believe that it was one
5 of the first, yes. There was another
6 one made in conjunction with this.

7 Q. What is that telephone
8 number at the bottom?

9 A. It's 1-800-337-5202.

10 Q. Is that your number?

11 A. Huh-uh, it's U.S.
12 Beverage's number.

13 Q. It's U.S. Beverage's
14 number?

15 A. That's correct.

16 Q. I may have jumped ahead a
17 little bit here, but we were talking
18 about Trident Marketing, and you were
19 talking about marketing a brand or
20 whatever.

21 A. Uh-huh (nodding head).

22 Q. I understand from this
23 lawsuit it's your contention that you

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1 and Ryan Hamner came up with Juice
2 Alive --

3 A. Ryan created it (nodding
4 head).

5 Q. -- for your corporation,
6 Trident Marketing?

7 A. For our corporation
8 (nodding head).

9 Q. And when was this done?

10 A. He created the brand
11 sometime in early 2004.

12 Q. And you still don't think
13 that this is the brand and the
14 marketing is not in the same business
15 that U.S. Beverage is in?

16 A. I don't think that U.S.
17 Beverage was a marketing company.

18 Q. Well, I understand that.

19 A. Okay. I'm not sure what
20 you're asking me then.

21 Q. But you're saying you came
22 up with Juice Alive --

23 A. I'm saying Ryan came up

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1 that not correct?

2 A. I continued to make sales
3 throughout my employment with U.S.
4 Beverage and, yes, I did start another
5 company called Trident Marketing.

6 Q. Do you contend you're not
7 employed with U.S. Beverage right now?

8 A. I don't know whether I am
9 or not.

10 Q. You certainly don't
11 disagree that you -- you're still a
12 shareholder, aren't you?

13 A. Uh-huh (nodding head), I'm
14 still a shareholder, but I don't know
15 if I'm employed or not.

16 Q. When did you and Ryan with
17 Trident Marketing attempt to get this
18 Juice Alive trademark?

19 A. When did we attempt to?

20 Q. When did you start the
21 process?

22 A. I registered it with the
23 USPTO at some point in time. I'm sure

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1 it's very easy to go back and get the
2 date that was done.

3 Q. If I represent the document
4 says September of '04, would you
5 disagree with that date?

6 A. If I saw the document, I'm
7 sure I wouldn't disagree with it.

8 Q. This is several documents
9 regarding the trademark that was
10 produced to me by your attorney. I'm
11 going to mark it as Plaintiff's Exhibit
12 11.

13
14 (Whereupon, Plaintiff's Exhibit 11
15 was marked for identification and
16 same is attached hereto.)

17
18 Q. I'm just going to mark it
19 as one document. Do you see where it
20 says filing date?

21 A. Uh-huh (nodding head).

22 Q. Do you see where it says
23 September 6, 2004?

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1 A. Yes, I do.

2 Q. Okay. Do you agree that
3 you submitted the application in
4 September of 2004?

5 A. Yes, I do.

6 Q. And were you an officer of
7 U.S. Beverage at that time?

8 A. Yes, I was.

9 Q. Were you a shareholder of
10 U.S. Beverage at that time?

11 A. Yes, I was.

12 Q. Were you currently a vice
13 president?

14 A. Yes, I was.

15 Q. And was currently your job
16 to be in charge of sales at U.S.
17 Beverage?

18 A. That's correct.

19 Q. And Trident Marketing is
20 the one who submitted this application;
21 is that correct?

22 A. I do believe that is
23 correct, yes.

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1 that U.S. Beverage is trying to sell?

2 A. It's -- Part of it is to
3 sell it and to promote it, yes.

4 Q. Were you doing that during
5 2004?

6 A. Yes, I was.

7 Q. Were you not promoting --
8 Were you promoting your own product,
9 Juice Alive?

10 A. Um, we were trying to
11 market it for U.S. Beverage in a
12 certain geographic region.

13 Q. And you were marketing on
14 your own or with other people in other
15 regions; is that correct?

16 A. That's correct.

17 Q. And it would be the same
18 product -- underlying product that U.S.
19 Beverage uses?

20 A. It's a juice product
21 (nodding head).

22 Q. Right. And that's what
23 U.S. Beverage is doing at this point;

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1 A. We were marketing Trident
2 Marketing Juice Alive in -- we did some
3 mailers for the states of Florida and
4 Texas.

5 Q. You weren't doing anything
6 in North Carolina at that time?

7 A. Not through Trident
8 Marketing, no.

9 Q. Were you doing it through
10 somebody else?

11 A. We had -- I think it was
12 late 2004, Patrick had -- my brother
13 had started putting out some Granita
14 machines in North Carolina. It was
15 late 2004 or early 2005. I don't
16 remember the specific date.

17 Q. Were you associated with
18 your brother?

19 A. Am I associated with my
20 brother?

21 Q. Were you associated at the
22 time with your brother in some sort of
23 company?

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1 A. It was a sole
2 proprietorship.

3 Q. Does it have a name?

4 A. John Walker doing business
5 as Juice Alive.

6 Q. John Walker doing business
7 as Juice Alive?

8 A. Right.

9 Q. So you were actually
10 selling machines -- Granita machines in
11 North Carolina in 2004?

12 A. No, we were not selling the
13 machines then.

14 Q. What did you just tell me
15 Patrick was doing?

16 A. We had bought some
17 machines, and he had put some out.

18 Q. What does that mean? What
19 does that mean you put them out?

20 A. It means we bought them and
21 then put them into the customers'
22 locations. You are implying that we
23 are selling them, and we're not selling

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1 them.

2 Q. But you would put juice in
3 those machines; is that correct --

4 A. That's correct.

5 Q. -- which you were gaining a
6 profit from; correct?

7 A. Correct.

8 Q. Did you ever share any of
9 those profits with U.S. Beverage?

10 A. No, I did not.

11 Q. And you say you were --
12 During this time frame, you say you
13 were marketing Juice Alive for U.S.
14 Beverage --

15 A. (Witness nodding head).

16 Q. -- in the geographical
17 region?

18 A. (Witness nodding head).

19 Q. I don't understand what --
20 I mean, I understand what that means,
21 but when they delivered juice to
22 somebody that was called Juice Alive,
23 you were being paid for that; is that

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1 not correct?

2 A. Correct, uh-huh (nodding
3 head).

4 Q. Trident Marketing was being
5 paid for that?

6 A. Correct.

7 Q. And it was being paid by
8 U.S. Beverage?

9 A. No, it was being paid to
10 Trident Marketing from Supreme
11 Beverage.

12 Q. Did U.S. Beverage have to
13 pay Supreme for it?

14 A. Yes, they did.

15 Q. So indirectly --

16 A. Indirectly, yes.

17 Q. -- it was coming from U.S.
18 Beverage?

19 A. Correct.

20 Q. So you're making a profit
21 off U.S. Beverage?

22 A. I can't say if we were
23 making a profit. Actually, I think we

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1 agreed to it?

2 A. How do I think they agreed
3 to it?

4 Q. Did you give them any
5 choice?

6 A. Sure. They had the option.

7 Q. No. Once you developed
8 Juice Alive, did you give U.S. Beverage
9 any option to have Juice Alive?

10 A. Did I give them the option
11 to own the brand?

12 Q. Yeah.

13 A. No, I did not.

14 Q. Right. You just decided
15 you were going to make your own profit
16 off of it; right?

17 A. No, I decided --

18 MR. JACKSON: Object to the
19 form.

20 A. The brand was created for
21 -- it was created by Trident Marketing.
22 It is not owned by U.S. Beverage.

23 Q. So you've got your brother

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1 constitute -- Just as long as you can
2 show a few customer sheets, you're
3 doing your job with U.S Beverage --

4 MR. JACKSON: Object to the
5 form.

6 Q. -- is that your contention?

7 A. I'm saying that I continued
8 to open up accounts and sell accounts
9 on behalf of U.S. Beverage during that
10 time period.

11 Q. Which would also benefit
12 you because you were selling Juice
13 Alive; correct?

14 A. I don't know if U.S.
15 Beverage had actually -- when you're
16 referring to selling accounts, you have
17 to make a distinction between what type
18 of account we were selling. Was it the
19 daycare accounts or was it the school
20 accounts? There were some accounts
21 that may have been using the Juice
22 Alive brand at that time. I can't go
23 back and tell you for sure --

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1 Q. Any accounts.

2 A. -- whether they were using
3 Juice Alive or whatever. But I still
4 continued to open up accounts for U.S.
5 Beverage during that time.

6 Q. That's fine. But if they
7 did use Juice Alive, you would be
8 making money on the side also, wouldn't
9 you?

10 A. Trident Marketing would be
11 paid a fee for the use of their brand.

12 Q. Well, I agree, but would --
13 I mean, Trident Marketing is not in
14 existence to lose money, is it?

15 A. No.

16 Q. You're trying to make
17 money, aren't you?

18 A. Certainly.

19 Q. Did U.S. Beverage have
20 accounts in North Carolina during that
21 time frame?

22 A. Not that I'm aware of.

23 Q. When did John Walker d/b/a

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1 not own that.

2 Q. Any others that you can
3 think of?

4 A. Huh-uh (shaking head). I
5 think those are the only two to come to
6 my mind.

7 Q. So you came to them and
8 said we think that -- or I think that
9 you need to keep -- you need to have a
10 brand identity of your own?

11 A. I felt that was important
12 (nodding head) --

13 Q. Right.

14 A. -- yes.

15 Q. And are you saying that
16 they didn't feel that was important?

17 A. I don't think they felt
18 that way, no. I don't think they felt
19 that there was any value in a brand.

20 Q. They told you they didn't
21 think there was any value in a brand,
22 you're going to testify to that?

23 A. I can't recall if they

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1 specifically said that to me or not,
2 but the feeling that I got was that
3 they were not going to invest the time
4 or the money to create one.

5 Q. Well, that's it; that's
6 what you wanted to do rather than sell
7 products, isn't it?

8 MR. JACKSON: Object to the
9 form.

10 A. No.

11 Q. Is it not true that you
12 told them that you wanted to not
13 travel, spend the whole time thinking
14 up a brand, and not do your job as
15 sales?

16 A. That's not true, no.

17 Q. What did you say to them?

18 A. On what specific time are
19 you referring to?

20 Q. Well, what time did you say
21 this to them?

22 A. I made it clear to Grady
23 and Tom that I really didn't like to

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1 costs that are incurred with what I
2 consider to be marketing, and I think
3 that U.S. Beverage was unwilling to
4 incur those costs.

5 Q. You think U.S. Beverage is
6 unwilling to incur costs to try to sell
7 its product which is what you were
8 supposed to be doing?

9 A. Rephrase that. I don't
10 quite get that question.

11 Q. Well, I mean, I don't know
12 how you define marketing, but we've
13 just -- I mean, what I'm asking you is
14 that you don't think that -- under your
15 definition of marketing, you don't
16 think U.S. Beverage would want to do
17 that?

18 A. Now or then?

19 Q. Any time.

20 A. I can't speak for them now.
21 I know that when I brought that subject
22 up to them, it never seemed to be very
23 important and there was never a

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1 Q. Yes.

2 A. We discussed time frames of
3 when I could move back, but I don't
4 recall ever giving them a formal date
5 as to when I would come back.

6 Q. In time frames, I mean, did
7 you ever do it?

8 A. Did I ever move back?

9 Q. Yeah. At any time frame.

10 A. No.

11 Q. Did you ever intend to move
12 back?

13 A. We thought long and hard
14 about it, but as I mentioned to you
15 earlier, there was -- Grady and Tom
16 continually changed their mind between
17 me moving back and buying me out. So,
18 I mean, I can't really make a decision
19 to uproot my family and move back to
20 Alabama when my partners aren't sure if
21 that's what they want to do.

22 Q. Now, I assume in your
23 Trident Marketing that you and Ryan

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1 Hamner are meeting on some occasions,
2 are you not --

3 A. That's correct.

4 Q. -- during 2004?

5 A. That's correct.

6 Q. Are you driving in from
7 Texas to meet him in Columbus?

8 A. Sometimes I would -- I
9 don't know if I made any specific trips
10 back just to meet with him or not, or
11 if I may have met with him on times
12 when I was already back there.

13 Q. Just on U.S. Beverage
14 business or something?

15 A. Possibly (nodding head).

16 Q. Did you call him on the
17 telephone?

18 A. Did I call Ryan on the
19 telephone?

20 Q. Yes.

21 A. Certainly.

22 Q. On your cell phone?

23 A. Uh-huh (nodding head).

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1 Q. Was U.S. Beverage paying
2 for all that?

3 A. For the cell phone?

4 Q. Yes.

5 A. They did.

6 Q. What about the gas when you
7 drove to see Ryan?

8 A. I'm sure if it was using my
9 car, then U.S. Beverage probably paid
10 for the gas.

11 Q. You don't think anything is
12 wrong with that?

13 A. No, I don't.

14 Q. You've been talking about a
15 buyout. I'm going to show you
16 something from December of 2004, at
17 least that's what the document says.

18
19 (Whereupon, Plaintiff's Exhibit 12
20 was marked for identification and
21 same is attached hereto.)

22
23 Q. I'm marking this as

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1 to see where am I competing with U.S.
2 Beverage at.

3 Q. Well, I'm asking you.

4 A. I don't know where I'm
5 competing with U.S. Beverage at, where
6 I'm on U.S. Beverage's time and
7 payroll.

8 Q. You're putting products in
9 North Carolina, aren't you?

10 A. Right.

11 Q. Do you think that's not
12 competing with U.S. Beverage?

13 A. I don't think U.S. Beverage
14 has a presence in North Carolina.

15 Q. So you think that's fine
16 for you to go out do?

17 A. For me to go out and do
18 what? To sell products in North
19 Carolina?

20 Q. Yeah, the exact same
21 product that U.S. Beverage is selling
22 in Alabama.

23 MR. JACKSON: Object to the

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1 Q. Okay. Well, other than
2 responses -- going back to my original
3 question, other than -- I mean, this
4 would clearly be a response, like you
5 said.

6 Other than responses, did
7 you ever submit a letter to U.S.
8 Beverage that says "I want to sell my
9 shares of stock and I'm offering them
10 up to the company"?

11 A. I don't believe I did.

12 Q. All right. And none of
13 these negotiations ever resulted in
14 your shares being purchased, did they?

15 A. No, sir, they did not.

16 MR. JACKSON: Can we take a
17 brief break?

18 MR. GILL: Sure.

19
20 (Whereupon, a brief recess was
21 taken.)
22

23 Q. Moving on into 2005, let's

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1 distributors, they only sold to
2 schools.

3 Q. I mean, you're making the
4 distinction, but is selling to schools
5 the same type of business as U.S.
6 Beverage?

7 A. Yes.

8 Q. And the people that you
9 were contacting would be some of U.S.
10 Beverage's customers?

11 A. Some of the customers that
12 we contacted had bought from U.S.
13 Beverage in the past (nodding head).

14 Q. And you would have gotten
15 that information because you knew it
16 already, didn't you?

17 A. Well, not really. I mean,
18 it's public information.

19 Q. It's public information?

20 A. That's correct.

21 Q. It's public information as
22 to -- you're saying it's public
23 information as to what school is buying

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1 -- I mean, who they're buying what
2 product from, is that what you're
3 saying, because it's a public bid?

4 A. That's public too, right.

5 Q. But what I'm saying is you
6 called somebody up at the school that
7 was U.S. Beverage's customer -- I mean,
8 you know that because you had a contact
9 there already; right?

10 MR. JACKSON: Object to the
11 form.

12 A. There were some customers
13 that we called on that had bought from
14 U.S. Beverage in the past (nodding
15 head).

16 Q. And you had a contact there
17 already; right?

18 A. In some cases (nodding
19 head).

20 Q. A contact that you gained
21 through U.S. Beverage?

22 A. In some cases (nodding
23 head).

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1 A. Around about this time is
2 when I started spending more of my time
3 working for either Trident Marketing or
4 John Walker doing business as Juice
5 Alive (nodding head).

6 Q. Because you think that U.S.
7 Beverage is going under, don't you?

8 A. I hope not. I don't think
9 so.

10 Q. You thought so at the time,
11 did you not?

12 A. Did I think that -- what,
13 U.S. Beverage was going under?

14 Q. Uh-huh (nodding head).
15 Going bankrupt or having financial --

16 A. I was very concerned about
17 it, but as to whether or not they would
18 go out of business, I really don't
19 know.

20 Q. Why wouldn't you have
21 stayed with them?

22 A. What was your question
23 again; why wouldn't I have stayed on

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1 Q. -- do they have any
2 business around the southeast?

3 A. No, they don't.

4 Q. Who else?

5 A. We have Giles Distributing
6 in Detroit, Michigan; we have Menu
7 Maker Foods in Jefferson City,
8 Missouri.

9 Q. Giles Manufacturing?

10 A. Giles Distributing.

11 Q. Giles Distributing, I'm
12 sorry.

13 How long have you been
14 working with any of those companies?

15 A. They all came on board in
16 June, July of 2006.

17 Q. So just recently?

18 A. Uh-huh (nodding head).

19 Q. Okay. Are they in the
20 southeast?

21 A. No, they're not. They're
22 on the westcoast except for the one in
23 Detroit.

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1 Q. I mean, other than
2 yourself, you can distribute this
3 product, can't you, yourself; I mean,
4 Trident can do it?

5 A. When you say "distribute,"
6 I mean, in what capacity are you
7 referring to? Do you mean delivering
8 in a truck or shipping it or --

9 Q. Yeah. I mean, it comes out
10 of -- let's go back.

11 Does the product all come
12 out of Supreme Manufacturing?

13 A. All the product that we use
14 does, yes.

15 Q. All that you use?

16 A. Uh-huh (nodding head).

17 Q. I'm just saying, in some
18 cases, you get it from Supreme and it
19 goes to a distributor like U.S.
20 Beverage?

21 A. Correct, uh-huh (nodding
22 head).

23 Q. What I'm saying is that --

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1 A. If I'm in School A and
2 they're in School B, we're doing the
3 same business?

4 Q. Well, let me rephrase it.
5 You're competing for schools in
6 Mississippi currently?

7 A. Outside of the two hundred
8 mile radius that's outlined in the
9 non-compete, yes.

10 Q. Okay. You're paying close
11 attention to that two hundred miles?

12 A. I try to (nodding head).

13 Q. Okay. And you realize
14 you're still a shareholder?

15 A. That's correct.

16 Q. You realize you're still on
17 the building loan?

18 A. That's correct.

19 Q. You realize you've still
20 got health insurance through U.S.
21 Beverage?

22 A. No, I did not realize that.

23 Q. Well, we'll get there in a

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1 A. They're in Texas, they're
2 in Arkansas, they're in Mississippi,
3 they're in Alabama, and these are areas
4 where they have accounts. They have
5 accounts in Georgia and they have
6 accounts in the Florida Panhandle.

7 Q. You've got some accounts in
8 those areas too?

9 A. I have some accounts in
10 Mississippi and I have some accounts in
11 the Florida Panhandle, yes.

12 Q. In 2005?

13 A. No, not in 2005.

14 Q. We're talking about, and I
15 apologize if I'm confusing you. We're
16 talking about 2005 right now.

17 A. No; the answer is no, I
18 don't.

19 Q. No?

20 A. (Witness shakes head).

21 Q. Okay. But you have
22 accounts in other places?

23 A. In 2005?

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1 A. Did I meet with them?

2 Q. Uh-huh (nodding head).

3 A. One of the representatives
4 walked by our booth and I talked to him
5 for a few minutes.

6 Q. That's it? You didn't have
7 lunch with them or anything like that?

8 A. At the trade show, no.

9 Q. Were you not threatening
10 U.S. Beverage that you would go to
11 Dispensing Systems?

12 A. Was I threatening U.S.
13 Beverage?

14 Q. Well, maybe threatening is
15 a bad word. Were you not telling U.S.
16 Beverage that you would go to
17 Dispensing Systems if they did not up
18 their price to you?

19 A. U.S. Beverage was aware
20 that we were talking to Dispensing
21 Systems but I did not, to use your
22 quote, "threaten" them with that.

23 Q. Well, I took that back, and

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1 I never said you threatened them. I
2 said were you telling them that; were
3 they aware of it?

4 A. Were they aware of what?

5 Q. Were you making them aware
6 of the fact that you were negotiating
7 with Dispensing Systems at the same
8 time?

9 A. Yes, they knew that.

10 Q. All right. Which would, of
11 course, be in direct competition to
12 U.S. Beverage, would it not?

13 A. No, it would not.

14 Q. You don't think Dispensing
15 Systems is a competitor of U.S.
16 Beverage?

17 A. I think they are, but I
18 don't think that what we were doing is
19 -- when you say competing with U.S.
20 Beverage, again, U.S. Beverage was not
21 in the business of marketing products
22 and selling licensing agreements.

23 Q. Are you going to make that

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1 distinction all day? Do you think that
2 helps you?

3 A. I think that it's important
4 (nodding head).

5 Q. All right. Well, that's
6 not what I said. I said did you -- was
7 Dispensing Systems a competitor, I
8 didn't say -- I was talking about
9 Dispensing Systems, and you agree with
10 me that Dispensing Systems is a
11 competitor; right?

12 A. I would agree that they
13 have school accounts. Now, I don't
14 know to what extent they compete with
15 U.S. Beverage in the frozen beverage
16 industry prior to the time frame that
17 you're talking about.

18 Q. You had just told me you
19 would agree they were a competitor
20 before that last speech, but that's --

21 A. Well, again --

22 MR. GILL: Let's take a
23 five-minute break.

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1 a dollar twenty price increase per case
2 to be paid for Juice Alive?

3 A. Yes, I do.

4 Q. So that would be a dollar
5 twenty per case more than previously;
6 correct?

7 A. That's correct.

8 Q. At some point, did you
9 change this agreement?

10 A. Did I change the agreement?

11 Q. Uh-huh (nodding head).

12 A. I told them that in order
13 for me to support them the way I felt
14 they needed to be supported, that a
15 dollar and twenty cents wasn't going to
16 be enough based on the movement that
17 they were doing.

18 Q. So you told them that you
19 were going to raise the price on them;
20 right?

21 A. I told them that was the
22 price that I needed to have to be able
23 to do the things that I felt that the

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1 this is from?

2 A. I don't know the exact
3 date, no, but I do remember the
4 document.

5 Q. Looking at the document, do
6 you agree with me that it's probably
7 sometime in late 2005?

8 A. It appears to be, yes.

9 Q. So this is once again U.S.
10 Beverage attempting to buy you out?

11 A. They're making an offer
12 here; correct, or outlining what they
13 perceive to be an offer.

14 Q. And you didn't accept that
15 offer, did you?

16 A. No, I did not.

17 Q. In fact, you never accepted
18 an offer, did you?

19 A. No, I've never accepted an
20 offer.

21 Q. And you never, in fact,
22 offered the company -- just made an
23 offer on your own to sell the shares to

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1 them?

2 A. On my own?

3 Q. Yeah.

4 A. I responded to several
5 offers with the things that I felt were
6 important to my cause. When they sent
7 me an offer, I responded with some
8 altercations (sic) to the offer, so I
9 think that could be construed as a
10 counteroffer.

11 Q. Some alterations to?

12 A. (Witness nodding head).

13 Q. And you have -- Again, you
14 have never just tendered your shares to
15 the company? Do you understand what I
16 mean by tender?

17 A. I think I do, yes.

18 Q. You've never just said
19 "Here, I'm going off on my own, I'm
20 sorry, here are my shares"?

21 A. When you say "here," just
22 outright give them to them --

23 Q. Yeah, outright give them to

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1 them.

2 A. -- for no cost for --

3 Q. Yeah.

4 A. No, I've never offered them
5 that.

6 Q. And you realize that you
7 are still on various loans and the
8 building?

9 A. Yeah; I know that very
10 well, yes.

11 Q. And you realize that most
12 people won't loan U.S. Beverage money
13 without all of the shareholders as
14 personal guarantors?

15 A. Well, typically up to a
16 point, companies do require anyone who
17 owns twenty percent or more of a
18 business to sign as a personal
19 guarantor. There is a certain point in
20 time where that's not required any
21 longer.

22 Q. So you realize that U.S.
23 Beverage has a very difficult time

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1 West has never been an employee of
2 yours?

3 A. An employee, no.

4 Q. But you pay him; right?

5 A. I do (nodding head).

6 Q. You pay him to market your
7 product to schools in Mississippi?

8 A. Correct.

9 Q. Schools that U.S. Beverage
10 would also be attempting to gain their
11 business?

12 MR. JACKSON: Object to the
13 form.

14 A. Among other companies as
15 well (nodding head).

16 Q. Well, I understand other
17 companies, but Scottie West is in
18 Mississippi to market your product in a
19 competitive environment with U.S.
20 Beverage in 2006?

21 A. He is there to open up
22 accounts for Juice Alive.

23 Q. Would that not be

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1 competitive to U.S. Beverage?

2 A. Not according to the terms
3 of the non-compete that we have in
4 place.

5 Q. Well, I'm not talking about
6 the non-compete. If you're both at the
7 same school and you're both bidding on
8 the same thing, are you not in
9 competition?

10 A. I believe we are, yes.

11 Q. So you agree that that has
12 occurred?

13 A. That Juice Alive and U.S.
14 Beverage have bid on the same school
15 district?

16 Q. Uh-huh (nodding head).

17 A. Yes; to my knowledge that
18 has occurred, yes.

19 Q. And Juice Alive is all that
20 Trident Marketing does; right?

21 A. Yes; it is now, yes.

22 Q. Now, what do you mean?

23 A. When it was first formed,

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1 MR. JACKSON: Object to the
2 form.

3 A. I'm sorry?

4 Q. You use Dispensing Systems?

5 A. I don't use them, they're a
6 distributor of ours.

7 Q. Well, I mean, if they're
8 distributing (sic) of yours -- I mean,
9 if they're a distributor --

10 A. Uh-huh (nodding head).

11 Q. -- well, then, they're
12 doing something to benefit you, are
13 they not?

14 A. If they're buying product
15 and paying for it, that would be
16 benefitting Trident Marketing, correct.

17 Q. Are they doing that in
18 Alabama?

19 A. No, we have not sold to any
20 branch in Alabama, and I don't think
21 they've opened up any accounts in
22 Alabama.

23 Q. What about in Georgia?

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1 A. I think they have opened up
2 one account in Georgia.

3 Q. They as Dispensing Systems?

4 A. Correct, Dispensing
5 Systems.

6 Q. And when you say "they have
7 opened up one account," you mean that
8 you think that they have got one
9 account in which they purchase product
10 under the Juice Alive label --

11 A. That would be correct.

12 Q. -- and distribute it to
13 somebody?

14 A. That would be correct.

15 Q. Has Dispensing Systems --
16 whether or not they've actually got any
17 accounts, have they bid on anything in
18 Alabama using Juice Alive?

19 A. Yes, they have.

20 Q. They just weren't
21 successful?

22 A. It doesn't appear they
23 were, no.

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1 Q. So Dispensing Systems --
2 I'm calling that right? Dispensing
3 Systems is their name; right?

4 A. That's correct.

5 Q. They've attempted to sell
6 the Juice Alive label in Alabama --

7 A. That's correct.

8 Q. -- which would be your
9 product?

10 A. Correct.

11 Q. And under your definition
12 of the non-compete agreement, you would
13 view that as not competing?

14 A. That's correct.

15 Q. Why is that?

16 A. Because again, Trident
17 Marketing is the company that goes out
18 and licenses, engages in licensing
19 agreements or distributor agreements
20 with other companies, and U.S. Beverage
21 does not and did not do that at the
22 time of our merger.

23 Q. When did you come up with

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1 that explanation?

2 MR. JACKSON: Object to the
3 form.

4 A. I just think it's -- I
5 mean, it's not an explanation, it's
6 just the answer to your question.

7 Q. Well, Dispensing Systems is
8 at a school in Alabama bidding on the
9 same product -- I mean, bidding to that
10 school to attempt to sell the same
11 product that U.S. Beverage is --

12 A. I don't think that's
13 correct.

14 Q. -- or a similar product?

15 A. A similar product.

16 Q. A similar product --

17 A. Uh-huh (nodding head).

18 Q. -- with the Juice Alive
19 label; Dispensing Systems has the Juice
20 Alive label?

21 A. Correct.

22 Q. U.S. Beverage has something
23 else at this point?

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1 A. Correct.

2 Q. And you don't view that as
3 competition?

4 A. I don't view that as me
5 competing with U.S. Beverage, no.

6 Q. You just view it as
7 Dispensing Systems?

8 A. Again, I don't view that as
9 John Walker competing with U.S.
10 Beverage.

11 Q. But you would gain a
12 benefit from that if they won, would
13 you not?

14 A. If they won the -- if they
15 won the bid and ordered product and
16 paid their bills to me, then at some
17 point in time I would hope to get a
18 benefit from it.

19 Q. You'd get a benefit from
20 that any time it happens; right?

21 A. If it happens.

22 Q. So you would want them to
23 win the bid?

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1 A. I give them an opportunity
2 to go out there and compete in the
3 market. It's up to them whether or not
4 they are competitive.

5 Q. That's not the question.
6 The question is: You would want them
7 to win the bid in Alabama because you
8 would gain a benefit if they paid your
9 bill?

10 A. If they ordered product
11 from us and paid our bill, yes, we
12 would get a benefit.

13 Q. So you would want them to
14 win?

15 MR. JACKSON: Object to the
16 form.

17 A. I would want them to engage
18 in business that was profitable for
19 them (nodding head).

20 Q. I mean, we're just
21 splitting hairs.

22 A. If they bid a price that
23 wasn't profitable and it lead to the

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1 demise of the company, that wouldn't
2 benefit me.

3 Q. I understand that, but if
4 they sell product to a school in
5 Alabama which bears the Juice Alive
6 label and they pay you for that -- the
7 use of that in that school, that would
8 benefit you, would it not?

9 A. Again, if those certain
10 conditions were met; if they bought it,
11 paid for it, and I received the money
12 for it, that would benefit Trident
13 Marketing.

14 Q. And you're the sole
15 shareholder of Trident Marketing; is
16 that correct?

17 A. That is correct.

18 Q. So you'd rather them win
19 than lose?

20 MR. JACKSON: Asked and
21 answered. You've already asked him
22 that three times.

23 MR. GILL: Well, he won't

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1 answer it.

2 MR. JACKSON: I think he
3 has answered it.

4 MR. GILL: He hasn't
5 answered it.

6 MR. JACKSON: He hasn't
7 answered it the way you want him to
8 answer it, but he's answered it.

9 MR. GILL: The answer is as
10 simple --

11 Q. Would you like them to win
12 the bid?

13 A. I would like for Dispensing
14 Systems to sell our product (nodding
15 head).

16 MR. GILL: Do you think
17 that's an answer to that question?

18 A. If it's through winning the
19 bid or whatnot --

20 MR. JACKSON: I think
21 you've asked it three or four times
22 now.

23 MR. GILL: We'll leave it.